

INVESTIGATIONS & HEARINGS

Ch. 2

§ 40-244

proceedings or taking testimony shall not invalidate any order, decision, or rule approved by the commission. *Southern Pac. Co. v. State* (1917) 19 Ariz. 20, 165 P. 303, affirmed 39 S.Ct. 313, 249 U.S. 472, 63 L.Ed. 713.

A corporation cannot appear before the Arizona corporation commission by one of its corporate officers, who is not a member of the state bar. *Op. Atty. Gen. No. 71-11*.

Representation of another before the Arizona corporation commission by person who is not admitted to state bar constitutes the unauthorized practice of law, in violation of § 32-261. *Id.*

2. Powers of commission

Under Civ. Code 1913, § 3414 (repealed), providing for issuance of licenses to insurance agents, and Laws 1915, Ch. 58 (repealed), making it unlawful for a foreign insurance company to write or accept any insurance policy except through its lawfully appointed and authorized agent, and providing that when a solicitor or agent accepts an application from any person not provided with a certificate the commission shall, upon due proof or notice, suspend or revoke the certificate of such agent or solicitor, the corporation commission, which was authorized to hear such charges, had no power to grant a rehearing after having once disposed of the charges in favor of the insurance agent, nor could it grant a rehearing under its rules promulgated pursuant to Const. Art. 15, § 6, declaring that all applications relating to matters over which the commission had jurisdiction and which were

not covered by preceding rules shall have been made by a petition; the procedure being such as the commission may have prescribed. *Johnson v. Betts* (1920) 21 Ariz. 365, 188 P. 271.

While the corporation commission is a creature of the Constitution, and by it vested with named powers over public service corporations, its supervisory powers over insurance companies are statutory, and it is governed by the rule that special tribunals exercising special summary powers must find their authority within the statute, having no common-law or implied powers, except such as are absolutely necessary to carry out powers expressly granted. *Id.*

Common carriers by aircraft granted statewide authority prior to July, 1971, may establish sub-bases without approval of the corporation commission. *Op. Atty. Gen. No. 76-2, p. 77, 1975-76*.

3. Ex parte communications

Ex parte communications among hearing officer, Director of Corporation Commission's Utilities Division, and electric company pertaining to rate proceedings before Commission which electric company had commenced did not mandate dismissal of the proceeding, and Commission had discretion to declare recommended opinion and order of hearing officer void, to give parties opportunity to submit additional briefs and proposed opinions and orders, and remove hearing officer and Director from any further involvement. *State ex rel. Corbin v. Arizona Corp. Com'n* (App. 1984) 693 P.2d 362.

§ 40-244. Administration of oaths and certification to official acts by commissioners; taking of depositions; witness fees and mileage

A. Each commissioner may administer oaths and certify to all official acts. The commission, or a commissioner, or any party, may take depositions as in a court of record.

B. Each witness who appears by order of the commission or a commissioner shall receive for his attendance the same fees allowed by law to a witness in civil actions, which shall be paid by the party at whose request the witness is subpoenaed. The fees of a witness subpoenaed by the commission shall be paid from the fund appropriated for the use of the commission as other expenses of the commission are paid. Any witness subpoenaed, except one subpoenaed by the commission, may, at the time of service, demand his mileage and one days attendance,

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and if not paid need not attend. A witness furnished free transportation shall not receive mileage.

Amended by Laws 1980, Ch. 76, § 3, eff. April 21, 1980.

Historical Note

Source:

Laws 1912, Ch. 90, § 55.

Civ.Code 1913, § 2331.

Rev.Code 1928, § 710.

Code 1939, § 69-239.

Laws 1972, Ch. 87, § 79 amended this section upon the condition that the Arizona constitution be amended to abolish the corporation commission and create a public utilities commission. The proposed amendment to which Laws 1972, Ch. 87, referred was rejected by the electorate. See Historical Note following § 40-101.

The 1980 amendment deleted subsecs. C and D, which had read:

"C. No person shall be excused from testifying or from producing books or papers in any investigation or hearing before the commission or a commissioner, when ordered to do so, upon the ground that the testimony or evidence, or book or paper required of him, may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty for or on account of any act or thing concerning which he, under oath, testifies or produces documentary evidence, except for perjury committed by him in giving such testimony.

"D. Nothing in this section shall be construed as in any manner granting to any public service corporation immunity of any kind."

Constitutional Provisions

Article 15, § 4 grants to the corporation commission "the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by

subpoena, attachment, and punishment" and the power "to take testimony under commission or deposition".

Cross References

Administrative procedure, compulsory testimony and privilege against self-incrimination, see § 41-1014.

Depositions and discovery, see Rules Civ.Proc. Rule 26 et seq.

Witnesses,

Compelling attendance, see § 12-2211 and Rules Civ.Proc. Rule 45(d).

Fees and mileage, see § 12-303.

Oaths, manner of administering, see § 12-2221.

Library References

Public Utilities ⇐162, 166.

C.J.S. Public Utilities §§ 80, 86.

§ 40-245. Admissibility in evidence of copies of documents filed with commission; orders, authorizations or certificates issued by commission required to be in writing; recording

A. Copies of all official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary under the official seal of the commission to be true copies of the originals, shall be received in evidence in a like manner as the originals.

B. Every order, authorization or certificate issued or approved by the commission under this article shall be in writing and entered on the

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records of the commission. Any such order, authorization or certificate, or a copy thereof, or a copy of the record thereof certified by a commissioner or by the secretary under the official seal of the commission to be a true copy of the original, may be recorded in the office of the county recorder of any county in which is located the principal place of business of the corporation affected thereby, or in which is located any of its property. A certificate under the seal of the commission that any such order, authorization or certificate has not been modified, stayed, suspended or revoked may also be likewise recorded.

Historical Note

Source:

Laws 1912, Ch. 90, § 56.
Civ.Code 1913, § 2332.

Rev.Code 1928, § 711.
Code 1939, § 69-240.

Library References

Evidence ⇐333(1).
C.J.S. Evidence § 637 et seq.

Notes of Decisions

1. In general

Where opinion and order of corporation commission granting certificate of public convenience and necessity to operate a domestic water utility specifically referred by

docket number to commission's file containing complete legal description of land area covered by certificate, clerical omission of such description from opinion and order was not a fatal defect. *Walker v. De Concini* (1959) 86 Ariz. 143, 341 P.2d 933.

§ 40-246. Complaint alleging violation by public service corporation of law or rule or order of commission; exception; joinder of complaints; notice of hearing

A. Complaint may be made by the commission of its own motion, or by any person or association of persons by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or any order or rule of the commission, but no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless it is signed by the mayor or a majority of the legislative body of the city or town within which the alleged violation occurred, or by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of the service.

B. All matters upon which complaint may be founded may be joined in one hearing, and a complaint is not defective for misjoinder or nonjoinder of parties or causes, either before the commission, or on review by the courts. The commission need not dismiss a complaint because of the absence of direct damage to the complainant.

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C. Upon filing the complaint, the commission shall set the time when and a place where a hearing will be had upon it and shall serve notice thereof, with a copy of the complaint, upon the party complained of not less than ten days before the time set for the hearing, unless the commission finds that public necessity requires that the hearing be held at an earlier date. Service may be made as a summons in a civil action is required to be served, or may be made in any manner giving actual notice, and no irregularity in the service is an excuse or defense.

Historical Note

Source:

Laws 1912, Ch. 90, § 60.
Civ.Code 1913, § 2336.

Rev.Code 1928, § 714.
Code 1939, § 69-243.

Constitutional Provisions

Article 15, § 6 authorizes the making of rules and regulations to govern the proceedings "instituted by and before" the corporation commission.

Cross References

Summons, service in civil actions, see Rules Civ.Proc. Rule 4(d).

Administrative Code References

Rules of practice and procedure before the corporation commission, see A.C.R.R. R14-3-101 et seq.

Law Review Commentaries

Utility rate regulation, legal aspects of future tests period. Gail L. Gibbons, 16 Ariz.L.Rev. 947 (1974).

Fact that a formal complaint was not filed before the corporation commission and that witnesses were not sworn would not be considered on appeal from a decision of the Supreme Court allowing recovery of a fine assessed by commission where the irregularity was not urged before the commission on motion for rehearing, in view of Civ. Code 1913, § 2342 (now § 40-253) providing that no corporation or person or the state should in any court urge or rely on any ground not set forth in the application for rehearing, and § 2329 (now § 40-243) providing that informality in proceedings or taking testimony should not invalidate any order, decision, or rule approved by the commission. *Southern Pac. Co. v. State* (1917) 19 Ariz. 20, 165 P. 303, affirmed 39 S.Ct. 313, 249 U.S. 472, 68 L.Ed. 713.

Arizona has sufficient legal authority to qualify for Phase I of Interim Authorization under the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C.A.

Notes of Decisions

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1. In general

The corporation commission could not, having disposed in favor of an insurance agent of a charge that he accepted an application for a life policy procured by one not a licensed agent, grant a rehearing by virtue of powers conferred on it by the Public Service Corporation Act; Civ.Code 1913, § 2336 et seq. (now § 40-246 et seq.) being restricted to proceedings before the commission affecting public utilities. *Johnson v. Betts* (1920) 21 Ariz. 365, 188 P. 271.

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§§ 6901 to 6987. Op.Atty.Gen. No. 180-143.

Arizona corporation commission lacked authority to compel Arizona public service corporations to purchase fuel oil cooperatively or jointly. Op.Atty.Gen. No. 179-99.

Section 40-246 providing that "no complaint shall be entertained by the [state corporation] commission, ... as to reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless it is signed ... by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of the service" does not require a full-scale rate hearing every time such complaint is filed but does require holding of a hearing to

determine whether there is sufficient evidence to warrant a full-scale rate hearing; upon determination that there is, arrangements have to be made with legislature for funding the investigation and hearing. Op. Atty.Gen. No. 69-6.

2. Railroads

Railroad, before having its property subjected to public use, was entitled to introduce evidence at hearing to establish that its service was reasonable and adequate and to have impartial determination on evidence by state corporation commission. *Southern Pac. Co. v. Arizona Corp. Commission* (1965) 98 Ariz. 339, 404 P.2d 692.

§ 40-247. Hearing; process to witnesses; report of proceedings; decision; service of order

A. The complainant and the party complained of, and such persons as the commission allows to intervene, shall be heard in person or by attorney, and may introduce evidence at the hearing. The commission shall issue process to enforce attendance of all necessary witnesses. Proceedings on any formal hearing, and all testimony, shall be stenographically reported by a shorthand reporter appointed by the commission.

B. After conclusion of the hearing, the commission shall make and file an order containing its decision. A copy of the order, certified under the seal of the commission, shall be served upon the person complained of, or his attorney. The order shall become operative twenty days after service thereof, except as otherwise provided, and shall continue in force either for the period designated therein, or until changed or abrogated by the commission. The commission may on application and for good cause shown extend the time for compliance with the order as recited therein.

Historical Note

Source:

Laws 1912, Ch. 90, § 61.
Civ.Code 1913, § 2337.

Rev.Code 1928, § 715.
Code 1939, § 69-244.

Cross References

Procedure before commission, authorization of rules, see Const. Art. 15, § 6.
Records of proceedings, see § 40-105.

Administrative Code References

Rules of practice and procedure before the corporation commission, see A.C.R.R. R14-3-101 et seq.

Law Review Commentaries

Utility rate schedules, automatic adjustment clauses, due process restraints. 18
Ariz.L.Rev. 453 (1976).

Library References

Public Utilities §161 et seq.
C.J.S. Public Utilities §§ 44, 53, 77, 78.

Notes of Decisions

In general 1
Ex parte communications 5
Operative dates, orders 3
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 In general 2
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Railroads 4

1. In general

Because of flagrantly improper ex parte communications which occurred between carrier's counsel and corporation commission's staff while matter of approval of rates for transportation of petroleum products was pending before commission, reversal of commission order was required. *Western Gillett, Inc. v. Arizona Corp. Commission* (App.1979) 121 Ariz. 541, 592 P.2d 375.

No judicial power is vested in or can be exercised by the corporation commission unless that power is expressly granted by the constitution. *Trico Elec. Co-op. v. Ralston* (1948) 67 Ariz. 358, 196 P.2d 470.

2. Orders—In general

Corporation commission, in regulating public service corporations, may make use of orders pertaining to particular situations or to particular public service corporations. *Arizona Corp. Commission v. Palm Springs Utility Co., Inc.* (1975) 24 Ariz.App. 124, 536 P.2d 245.

Lower courts and tribunal exercising quasi judicial functions, such as state corporation commission, are without jurisdiction to render judgment differing from prior Supreme Court judgment, which imports absolute verity. *Pacific Greyhound Lines v. Brooks* (1950) 70 Ariz. 339, 220 P.2d 477.

Arizona has sufficient legal authority to qualify for Phase I of Interim Authorization under the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901 to 6987. *Op.Atty.Gen. No. 180-143.*

3. — Operative dates, orders

The effective dates established in § 40-247 and § 40-250 (one twenty and the other thirty days after the entry of the orders authorized by the sections) have no relation to § 40-253 and cast no light on the matter. *Jenney v. Arizona Express, Inc.* (1961) 89 Ariz. 343, 362 P.2d 664.

4. Railroads

Railroad, before having its property subjected to public use, was entitled to introduce evidence at hearing to establish that its service was reasonable and adequate and to have impartial determination on evidence by state corporation commission. *Southern Pac. Co. v. Arizona Corp. Commission* (1965) 98 Ariz. 339, 404 P.2d 692.

5. Ex parte communications

Ex parte communications among hearing officer, Director of Corporation Commission's Utilities Division, and electric company pertaining to rate proceedings before Commission which electric company had commenced did not mandate dismissal of the proceeding, and Commission had discretion to declare recommended opinion and order of hearing officer void, to give parties opportunity to submit additional briefs and proposed opinions and orders, and remove hearing officer and Director from any further involvement. *State ex rel. Corbin v. Arizona Corp. Com'n* (App.1984) 143 Ariz. 219, 693 P.2d 362.

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Note 1

§ 40-248. Reparation of overcharge; action to recover overcharge; limitations

A. When complaint is made to the commission concerning any rate, fare, toll, rental or charge made by any public service corporation, and the commission finds, after investigation, that the corporation has made an excessive or discriminatory charge, the commission may order that the corporation make reparation to the complainant with interest at the legal rate from the date of collection, if no discrimination will result from such reparation. If the corporation does not comply with the order for payment of reparation within the time specified in the order, an action may be brought to recover the amount thereof.

B. All complaints concerning excessive or discriminatory charges shall be filed with the commission within two years from the time the cause of action accrues, and the action to enforce the order shall be brought within one year from the date of the order of the commission.

C. The remedy afforded in this section is cumulative and in addition to any other remedy provided for failure of a public service corporation to obey an order or decision of the commission.

Historical Note

Source:

Laws 1912, Ch. 90, § 71.
Civ.Code 1913, § 2347.

Rev.Code 1928, § 723.

Code 1939, § 69-252.

Constitutional Provisions

Article 15, § 6 provides in part: "The law-making power may enlarge the powers and extend the duties of the Corporation Commission * * *"

Law Review Commentaries

Utility rate schedules, automatic adjustment clauses, due process restraints. 18 Ariz.L.Rev. 453 (1976).

Library References

Public Utilities ¶183.
C.J.S. Public Utilities §§ 129 to 138.

Notes of Decisions

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1. In general

Section 2347 of Civ.Code 1913 (now § 40-248) authorizing corporation commission to require reparation for excessive charges applies only where carrier has enforced rates in excess of those prescribed

by commission. *El Paso & S.W.R. Co. v. Arizona Corporation Commission* (D.C.1931) 51 F.2d 573.

Where carrier merely collected intrastate rate authorized by state corporation commission, commission was without authority to order reparation, though rate prescribed and charged was found excessive. *Id.*

Where statutes did not define a maximum lawful rate for the services of a public

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corporation, if prices were exacted which, in the light of all the facts considered, were unreasonably high, one who paid such prices under protest, or under such circumstances as did not amount to acquiescence in the charge, could have by suit recovered the excess over a reasonable price. Salt River Valley Canal Co. v. Nelssen (1906) 10 Ariz. 9, 85 P. 117, 12 L.R.A.,N.S., 711, 16 Ann.Cas. 796.

2. Jurisdiction

Suit by carrier to enjoin enforcement of reparation order by Arizona corporation

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commission was within jurisdiction of federal court as involving federal question, in view of severity of penalties under state law. El Paso & S. W. R. Co. v. Arizona Corporation Commission (D.C.1931) 51 F.2d 573.

Whether rates which have been charged for its services by a public corporation were unreasonable, was a proper subject for judicial inquiry. Salt River Valley Canal Co. v. Nelssen (1906) 10 Ariz. 9, 85 P. 117, 12 L.R.A.,N.S., 711, 16 Ann.Cas. 796.

§ 40-249. Complaint by public service corporation; hearing

Any public service corporation shall have the same privilege to complain as is afforded other parties under this article, and the same procedure shall be followed as in other cases, except that the complaint may be heard ex parte by the commission, or may be served upon any parties designated by the commission.

Historical Note

Source:

Laws 1912, Ch. 90, § 62.
Civ.Code 1913, § 2338.

Rev.Code 1928, § 716.
Code 1939, § 69-245.

Library References

Public Utilities —163.
C.J.S. Public Utilities §§ 50, 77, 79.

§ 40-249.01. Repealed by Laws 1983, Ch. 61, § 2

Historical Note

The repealed § 40-249.01, which related to claims and actions involving common carriers, and limitations, was added by Laws 1968, Ch. 51, § 1.

For purpose of Laws 1983, Ch. 61, see Historical Note following § 9-519.

§ 40-250. Hearing on rate or other change in operations by public service corporation; establishment of rates or other practices by order of commission

A. No public service corporation shall raise any rate, fare, toll, rental or charge, or alter any classification, contract, practice, rule or regulation to result in any increase thereof, except upon a showing before the commission and a finding by the commission that an increase is justified. The showing before the commission by a public service corporation with gross operating revenues derived from intrastate operations of less than two hundred fifty thousand dollars, including the requested rate relief,

or by a telecommunications corporation may be made with or without a hearing as determined by order of the commission.

B. When there is filed with the commission any schedule stating an individual or joint rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation not increasing or resulting in an increase, the commission may, without answer or other pleadings by the interested corporation, but upon reasonable notice, conduct a hearing concerning the propriety of the rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation, and pending the hearing and the decision thereon, it shall not go into effect. The period of suspension thereof shall not extend one hundred twenty days beyond the time when it would otherwise go into effect, unless the commission extends the period of suspension for a further period not exceeding six months.

C. On the hearing the commission shall by order establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or establish others in lieu thereof, which it finds just and reasonable, and which, if not suspended, shall, on the expiration of thirty days from the time of filing the order, or in such lesser time as the commission grants, become effective and be established, subject to the power of the commission to alter or modify the order.

Amended by Laws 1978, Ch. 118, § 1; Laws 1984, Ch. 17, § 1; Laws 1984, Ch. 218, § 2, eff. April 19, 1984.

Historical Note

Source:

Laws 1912, Ch. 90, § 63.
Civ. Code 1913, § 2339.
Rev. Code 1928, § 717.
Code 1939, § 69-246.

Laws 1972, Ch. 87, § 80 amended this section upon the condition that the Arizona constitution be amended to abolish the corporation commission and create a public utilities commission. The proposed amendment to which Laws 1972, Ch. 87 referred was rejected by the electorate. See Historical Note following § 40-101.

The 1978 amendment added the second sentence in subsec. A.

Laws 1984, Ch. 17, § 1 substituted "revenues derived from intrastate operations of less than two hundred fifty thousand dollars" for "revenues of less than twenty-five

thousand dollars" in the second sentence of subsec. A; and substituted "fares" for "fare" in subsec. C.

Laws 1984, Ch. 218, § 2 substituted "revenues derived from intrastate operations of less than two hundred fifty thousand dollars, including the requested rate relief, or by a telecommunications corporation" for "revenues of less than twenty-five thousand dollars, including the requested rate relief," in the second sentence of subsec. A; and substituted "fares" for "fare" in subsec. C.

1984 Reviser's Note:

This section contains the amendments made by Laws 1984, chapter 17, section 1 and chapter 218, section 2 which were blended together as shown above pursuant to authority of § 41-1304.03.

Constitutional Provisions

Article 15, § 3, provides in part:

"The Corporation Commission shall have full power to, and shall, prescribe just and

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rather, commission has discretion in dealing with any defilement or corruption of quasi-judicial process that may arise and, under appropriate circumstances, may fashion remedies less drastic than dismissal which will accord to all parties fairness essential to fundamental notions of due process while at the same time preserving integrity of adjudicative body. *State ex rel. Corbin v. Arizona Corp. Com'n* (App.1984) 143 Ariz. 219, 693 P.2d 362.

7. Notice

No notice of proceedings held on application of public service corporation for interim rate relief need be given to any person; the corporation and commission are only necessary parties to such proceedings. *Op. Atty. Gen.* No. 71-17.

8. Evidence

On application filed by electric company for rate increase, evidence supported Corpo-

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ration Commission's decision that company had "firm" commitment for sale of energy to another power company, an indication that poor business judgment had been exercised in the past, since expenses were incurred in acquiring plant and equipment to satisfy projected demand for electricity that never materialized, and finding that the company's transmission system under circumstances should be regarded as an integrated, not a disjointed, transmission system. *Tucson Elec. Power Co. v. Arizona Corp. Com'n* (1982) 132 Ariz. 240, 645 P.2d 231.

Corporation commission's decision to allow only "actual" taxes incurred by electric company to be allocated to Arizona jurisdictional customers of company which was heavily engaged in wholesale sales of energy to another power company was not supported by any evidence. *Id.*

§ 40-250.01. Rate relief for small water companies

A. A public service corporation having annual gross operating revenues derived from intrastate operations of less than fifty thousand dollars and primarily engaged in furnishing water which applies to the commission for an order establishing increased rates, not exceeding twenty-five per cent of such corporation's existing rates, shall receive a final order establishing the proposed rates, or other rates in lieu of the proposed rates, not later than sixty days following the date of filing of a complete and correct application. This increase shall be granted not more than once annually. Any public service corporation applying for increased rates pursuant to this section shall mail written notice to its affected customers at the time of filing its application which shall include notification of the customer's protest rights.

B. The commission shall immediately adopt rules governing applications for increased rates made pursuant to this section. These rules shall specify the financial and statistical information necessary for the commission to establish rates and shall prescribe an appropriate form designed to permit public service corporations to apply for increased rates without undue burden and expense.

C. Following the filing of an application for increased rates pursuant to this section, the commission may, either on its own initiative following review of the application or on the basis of written customer protests concerning the application filed with the commission, require that a public service corporation furnish additional information pertaining to the proposed rate relief. Such request shall be made not more than thirty days following the date on which the complete and correct applica-

tion was filed. The public service corporation shall promptly supply the requested information.

D. Upon receipt of written protest by more than thirty-five per cent of the billed customers, the commission shall attempt to conciliate the rate request within the sixty day limit in accordance with rules and regulations which shall be adopted by the commission.

E. If the commission fails to issue a final order on the application of a public service corporation made pursuant to this section within sixty days following the date of filing the application, the rates proposed in the application shall become effective on the sixty-first day following filing the application, provided that the conditions set forth in subsection A of this section are satisfied.

F. At any subsequent hearing concerning the rates of a public service corporation, the commission may by order adjust any rates established pursuant to subsection E of this section.

Added by Laws 1985, Ch. 321, § 1, eff. May 10, 1985.

Repeal

This section is repealed by Laws 1985, Ch. 321, § 2, effective January 1, 1988. See Historical Note, post.

Historical Note

Laws 1985, Ch. 321, § 2, effective May 10, 1985, provides:

"Sec. 2. Delayed repeal

"Section 40-250.01, Arizona Revised Statutes, is repealed from and after December 31, 1987."

§ 40-251. Hearings on valuation of property of public service corporations; notice; introduction of evidence; written findings of fact required; admissibility in evidence; effect; exception

A. For the purpose of ascertaining matters concerning the valuation or revaluation of the property of public service corporations, the commission may conduct hearings at times or places it designates. Before any hearing or supplemental or further hearing is had the commission shall give the corporation affected thereby at least thirty days' written notice, specifying the time and place of the hearing, but such notice shall not prevent the commission from making any preliminary examination or investigation into such matters or from inquiring into them in any other investigation or hearing.

B. All corporations affected shall be heard and may introduce evidence at the hearing. The commission may receive evidence from other sources of information. The evidence introduced at the hearing shall be reduced to writing and certified under the seal of the commission. The commission shall make and file its finding of facts in writing upon all

matters concerning which evidence is introduced which in its judgment relates to the value of the property.

C. The original or supplemental findings, so made and filed, when properly certified under seal, shall be admissible in evidence in any action, proceeding or hearing before the commission or any court in which the commission, the state, or any officer, department or institution thereof, or any county, city, municipality or other body politic, and the corporation affected, is interested, whether arising under the provisions of this article or otherwise. Such findings, when received in evidence in any action or proceeding arising under this article, shall be conclusive evidence of the facts therein stated as of the dates therein stated under conditions then existing, and such facts may only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined.

D. Findings made at supplemental hearings or investigations shall be considered in connection with and as a part of the original findings except insofar as the supplemental findings change or modify the findings made at the original hearing or investigation.

E. For purposes of this section the commission may establish simplified procedures and may by order dispense with a hearing for a telecommunications corporation.

Amended by Laws 1984, Ch. 218, § 3, eff. April 19, 1984.

Historical Note

Source:

Laws 1912, Ch. 90, § 70.
Civ.Code 1913, § 2346.
Rev.Code 1928, § 722.
Code 1939, § 69-251.

The 1984 amendment added subsec. E.

1984 Reviser's Note:

Pursuant to authority of section 41-1304-02, in the heading of this section "; exception" was added.

Library References

Public Utilities ⇐161, 162, 165, 168.
C.J.S. Public Utilities §§ 44, 52, 53, 77, 78,
80, 82 to 85, 88.

Notes of Decisions

In general 1 Notice 2

Tucson Gas, Electric Light & Power Co.
(1914) 15 Ariz. 294, 138 P. 781.

1. In general

The functions of the corporation commission are neither legislative, executive nor judicial, but its duties and powers pervade them all, and it is in fact another department of government; and, where it is given exclusive power, it is supreme. State v.

2. Notice

No notice of proceedings held on application of public service corporation for interim rate relief need be given to any person; the corporation and commission are only necessary parties to such proceedings. Op.Atty. Gen. No. 71-17.

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§ 40-252. Rescission or amendment of orders by commission; collateral attack on final orders or decisions prohibited

The commission may at any time, upon notice to the corporation affected, and after opportunity to be heard as upon a complaint, rescind, alter or amend any order or decision made by it. When the order making such rescission, alteration or amendment is served upon the corporation affected, it is effective as an original order or decision. In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.

Historical Note

Source:

Laws 1912, Ch. 90, §§ 64, 65.
Civ.Code 1913, §§ 2340, 2341.

Rev.Code 1928, § 718.
Code 1939, § 69-247.

Constitutional Provisions

Article 2, § 9 prohibits laws which irrevocably grant privileges, franchises, or immunities.

Article 15, § 6 provides in part: "The law-making power . . . may prescribe

rules and regulations to govern proceedings instituted by and before" the corporation commission.

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1. In general

Suit by carrier to enjoin enforcement of reparation order by Arizona corporation commission was within jurisdiction of federal court as involving federal question, in view of severity of penalties under state law. *El Paso & S. W. R. Co. v. Arizona Corporation Commission* (D.C.1931) 51 F.2d 573.

Corporation commission's action in authorizing carriers to move household goods anywhere within state of Arizona amounted to more than mere "clarification" of carriers' existing authority, and commission therefore erred taking such action without first providing opportunity for existing carriers to meet any inadequacies in existing services. *Horizon Moving & Storage Co. v. Williams* (App.1976) 114 Ariz.App. 73, 559 P.2d 193.

Provision of § 40-252 permitting corporation commission to rescind, alter, or amend any order or decision made by it was intended to enable the commission to exercise continued regulatory control once a monopoly had been granted. *Id.*

Arizona is a regulated monopoly state and the monopoly is tolerated only because it will be subject to vigilant and continuous

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from area certificated to private water utility was trial de novo, the property owners had burden of proving invalidity of commission's order by clear and satisfactory evidence. *Id.*

Copies of other corporation commission's orders granting deletion of property from

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area certificated to other water utilities were improperly introduced in evidence in superior court proceeding to set aside commission's order that denied deletion of property from area certificated to private water utility. *Id.*

§ 40-253. Application for rehearing; hearing; effect; decision

A. After any final order or decision is made by the commission, any party to the action or proceeding or the attorney general on behalf of the state may apply for a rehearing of any matter determined in the action or proceeding and specified in the application for rehearing within twenty days of entry of the order or decision. Unless otherwise ordered, the filing of such an application does not stay the decision or order of the commission. If the commission does not grant the application within twenty days, it is deemed denied. If the commission grants the application, the commission shall promptly hear the matter and determine it within twenty days after final submission.

B. No claim arising from any order or decision of the commission shall accrue in any court to any party or the state unless the party or the state makes, before the effective date of the order or decision, application to the commission for a rehearing.

C. The application shall set forth specifically the grounds on which it is based, and no person, nor the state, shall in any court urge or rely on any ground not set forth in the application.

D. An application for rehearing shall not excuse any person from complying with and obeying any order or decision, or any requirements of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs.

E. If, after a rehearing and a consideration of all the facts, including those arising since the making of the order or decision, the commission finds that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify the order or decision, and such order or decision has the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision, unless so ordered by the commission.

Amended by Laws 1984, Ch. 199, § 1.

Historical Note

Source:

Laws 1912, Ch. 90, § 66.

Civ.Code 1913, § 2342.

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Rev.Code 1928, § 719.
Code 1939, § 69-248.

The 1984 amendment rewrote subsecs. A and B, which had read:

"A. After any order or decision is made by the commission, any party to the action or proceeding, or any stockholder, bondholder or other party pecuniarily interested in the corporation affected, or the attorney general on behalf of the state, may apply for a rehearing of any matter determined in the action or proceeding and specified in the application for rehearing. The commission may grant a rehearing, if in its judgment sufficient reason therefor appears.

"B. No claim arising from any order or decision of the commission shall accrue in any court to any corporation or person, or the state, unless the corporation or person, or the state, makes, before the effective date of the order or decision, application to the commission for a rehearing."

The 1984 amendment also deleted subsec. D, which had read:

"D. An application for a rehearing made ten days or more before the effective date of the order of which a rehearing is sought shall be granted or denied before the effective date, or the order shall be suspended until the application is granted or denied. If application is made within less than ten days before the effective date, and not granted within twenty days, it shall be deemed denied, unless the effective date of the order is, within the twenty days, extended for the period of the pendency of the application. If an application for a rehearing is granted without a suspension of the order involved, the commission shall forthwith hear the matter, and determine it within twenty days after final submission. If the determination is not made within such time, the application shall be deemed denied."

and redesignated former subsecs. E and F as subsecs. D and E.

Constitutional Provisions

Article 15, § 6 authorizes the "lawmaking power" to "prescribe rules and regulations to govern proceedings instituted by and before" the corporation commission.

Cross References

Parties, see § 40-344.

Petition for establishment of underground conversion service area, parties, see § 40-344.

Law Review Commentaries

Judicial review. 19 Ariz.L.Rev. 488 (1977).

Library References

Public Utilities 17, 167.
C.J.S. Public Utilities §§ 44 to 46, 48, 87, 96.

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preclude the customer from subsequently raising the defectiveness of the decision in a complaint filed with the superior court. *General Cable Corp. v. Arizona Corp. Commission* (1976) 27 Ariz.App. 386, 555 P.2d 355.

Contention that corporation commission's order requiring utility to furnish water of a specified quality to its customers was defective for failure to set forth findings of fact and conclusions of law was not properly before court of appeals, on appeal from superior court's review of such order, where contention was not raised before commission in utility's application for rehearing. *Arizona Corp. v. Commission v. Palm Springs Utility Co., Inc.* (1975) 24 Ariz.App. 124, 536 P.2d 245.

Where corporation commission held consolidated hearing on conflicting applications for certificate of convenience and necessity to supply water in an area, order approving application of one of applicants on January 27, 1959, disposed of the matter, and other applicant should have taken an appeal within 30 days after expiration of 20 days following application for rehearing when commission did not act on application for rehearing, and order of May 4 granting the certificate of convenience and necessity upon filing of required franchise and approval of state board of health could not be availed of to reopen the litigated controversy as to which applicant should get the certificate. *Paradise Val. Water Co. v. Arizona Corp. Commission* (1963) 92 Ariz. 391, 377 P.2d 768.

Fact that a formal complaint had not been filed before corporation commission and that witnesses had not been sworn was not reviewable on appeal where not urged before commission on motion for rehearing. *Southern Pac. Co. v. State* (1917) 19 Ariz. 20, 165 P. 303, affirmed 39 S.Ct. 313, 249 U.S. 472, 63 L.Ed. 713.

14. — Scope of review

Sole issue raised by sewer utility in its application for rehearing following determination of its rate base was lawfulness of State Corporation Commission's "generic"

decision to exclude from that rate base any contributions in aid of construction, although utility contended otherwise; therefore, jurisdiction of superior court was limited solely to consideration of lawfulness of that exclusion. *Cogent Public Service, Inc. v. Arizona Corp. Com'n* (App.1984) 142 Ariz. 52, 688 P.2d 698.

15. — Exhaustion of administrative remedies, review

Doctrine of exhaustion of remedies applies only when an administrative agency has original jurisdiction; once such jurisdiction exists, the exhaustion of remedies doctrine is used to determine whether the parties must completely exhaust the available administrative processes before seeking the aid of a court. *Campbell v. Mountain States Tel. & Tel. Co.* (App.1978) 120 Ariz. 426, 586 P.2d 987.

Although exhaustion of remedies is a rule of judicial administration, it is usually applied by virtue of express statutory mandate. *Id.*

Under doctrine of exhaustion of administrative remedies, corporation commission must be given opportunity to correct its errors before resort is had to provisions for judicial review, but the doctrine does not require that the commission have a double look at every item of evidence that might be presented. *State ex rel. Church v. Arizona Corp. Commission* (1963) 94 Ariz. 107, 382 P.2d 222.

Where, upon a motion for rehearing, the corporation commission hears new evidence, and thereafter affirms its original order, except in minor detail, it is not necessary for aggrieved party to apply for a second rehearing before bringing an action to set aside commission's order. *Id.*

When a party is aggrieved by an order of corporation commission, he must apply for a rehearing before the commission, setting forth the grounds upon which he relies, and if rehearing is denied, or if he remains unsatisfied after the decision on rehearing, he may then seek review of commission's order in the superior court. *Id.*

§ 40-254. Action to set aside or modify order of commission; filing; answer; trial; appeal; limitation upon jurisdiction of court to enjoin or review commission orders, decisions or acts

A. Any party in interest, or the attorney general on behalf of the state, being dissatisfied with any order or decision of the commission,

may within thirty days after a rehearing is denied or granted, and not afterwards, commence an action in the superior court in the county in which the commission has its office, against the commission as defendant, to vacate, set aside, affirm in part, reverse in part or remand with instructions to the commission such order or decision on the ground that the valuation, rate, joint rate, toll, fare, charge or finding, rule or regulation, classification or schedule, practice, demand, requirement, act or service provided in the order or decision is unlawful, or that any regulation, practice, act or service provided in the order is unreasonable. The answer of the commission shall be served and filed within twenty days after service of the complaint, whereupon the action shall be at issue and ready for trial upon ten days' notice to either party. The action shall be tried and determined as other civil actions except as provided in this section.

B. If the commission rescinds the order complained of, the action shall be dismissed, and if the commission alters, modifies or amends the order, the altered, modified or amended order shall replace the original order complained of, and judgment shall be given thereon as though made by the commission in the first instance.

C. The trial shall conform, as nearly as possible and except as otherwise prescribed by this section, to other trials in civil actions. Judgment shall be given affirming, modifying or setting aside the original or amended order.

D. Either party to the action, or the attorney general on behalf of the state, within thirty days after the judgment of the superior court is given, may appeal to the supreme court.

E. In all trials, actions and proceedings the burden of proof shall be upon the party adverse to the commission or seeking to vacate or set aside any determination or order of the commission to show by clear and satisfactory evidence that it is unreasonable or unlawful.

F. Except as provided by this section no court of this state shall have jurisdiction to enjoin, restrain, suspend, delay or review any order or decision of the commission, or to enjoin, restrain or interfere with the commission in the performance of its official duties, and the rules, regulations, orders or decrees fixed by the commission shall remain in force pending the decision of the courts, but a writ of mandamus shall lie from the supreme court to the commission in cases authorized by law. Amended by Laws 1985, ch. 202, § 1.

Historical Note

Source:

Laws 1912, Ch. 90, § 67.
Civ.Code 1913, § 2343.

Rev.Code 1928, § 720.
Code 1939, § 69-249.

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question of issuable fact before the court; hence carrier's motion for judgment on the pleadings was properly granted. *Corporation Commission v. Consolidated Stage Co.* (1945) 63 Ariz. 257, 161 P.2d 110.

29. Review, in general

In rate case, appellate court reviews superior court's decision and not that of corporation commission, superior court's ruling on commission's decision will be upheld if supported by reasonable evidence, and, if superior court has disturbed commission's findings, appellate court will examine superior court's contrary conclusions to see if they are supported by clear and satisfactory evidence. *Tucson Elec. Power Co. v. Arizona Corp. Com'n* (1982) 132 Ariz. 240, 645 P.2d 231.

On review of rate case, trial de novo in superior court is limited because, even though court may consider new evidence, constitution restricts level of inquiry, and court may not reweigh evidence as substituting judgment for that of corporation commission, but may disturb commission's rate decision only if it is not reasonably supported by evidence, is arbitrary or is otherwise unlawful. *Id.*

Setting fair rate of return on fair value base of public service utility may, at the administrative level, require state corporation commission to consider post test year evidence on due process grounds; however, limiting judicial review to same period of time as considered by commission does not involve due process consideration. *Arizona Corp. Commission v. Citizens Utilities Co.* (App.1978) 120 Ariz. 184, 584 P.2d 1175.

On appeal from superior court's finding on appeal from decision of corporation commission that motor carrier's certificate contained no territorial restrictions on transporting, general commodities, court of appeal's review was limited to whether there was substantial evidence in the record to

support the finding of the superior court. *Arizona Corp. Commission v. Pacific Motor Trucking Co.* (App.1977) 116 Ariz. 465, 569 P.2d 1363.

In determining validity of a motor carrier's certificate the court must go behind the grant of authority on face of the certificate and examine the application and order on which any certificate necessarily rests. *Id.*

Superior court acts de novo when action is based on authority of provision of this section that party in interest may commence action in superior court against corporation commission as defendant to vacate decision of commission. *Purolator Sec., Inc. v. Thorneycroft* (1977) 116 Ariz. 394, 569 P.2d 824.

Test to be applied by supreme court on review of superior court's de novo review of corporation commission decision after party in interest has commenced action in superior court against commission as defendant to vacate commission's decision is whether there is substantial evidence in record to support order of superior court. *Id.*

When reviewing superior court's de novo review of corporation commission order, supreme court will not conduct separate de novo trial, but will uphold trial court's judgment if it is supported by any reasonable evidence. *Sun City Water Co. v. Arizona Corp. Commission* (1976) 113 Ariz. 464, 556 P.2d 1126.

Trial of action challenging issuance of certificate of convenience and necessity by corporation commission was de novo, in sense that it was not merely a review of evidence by trial court to see whether there was any reasonable evidence to sustain order of the commission, and the trial court weighs evidence, draws its own inferences therefrom, and comes to an independent conclusion. *Lofersky v. Needel* (1976) 26 Ariz.App. 231, 547 P.2d 502.

§ 40-255. Precedence of actions

All actions and proceedings to which the commission or the state is a party, or in which the attorney general has been allowed to intervene, and in which any question arises under this title, or under or concerning any order or decision of the commission, shall be preferred and shall be heard and determined in preference to other civil matters except election actions.

Historical Note

Source:

Laws 1912, Ch. 90, § 69.
Civ.Code 1913, § 2345.

Rev.Code 1928, § 721.
Code 1939, § 69-250.

Law Review Commentaries

Utility rate schedules, automatic adjustment clauses, due process restraints. 18
Ariz.L.Rev. 453 (1976).

Library References

Public Utilities ¶182, 187.
C.J.S. Public Utilities §§ 126 to 135, 137, 138.

ARTICLE 4. CERTIFICATES OF CONVENIENCE AND
NECESSITY AND FRANCHISES

§ 40-281. Certificate required before construction by public service corporation; exceptions; complaint by corporation injuriously affected by construction hearing; exclusive franchise or monopoly

Text of section pending constitutional amendment

A. A public service corporation, other than a railroad, shall not begin construction of a street railroad, a line, plant, service or system, or any extension thereof, without first having obtained from the commission a certificate of public convenience and necessity.

Contiguous
B. This section shall not require such corporation to secure a certificate for an extension within a city, county or town within which it has lawfully commenced operations, or for an extension into territory either within or without a city, county or town, contiguous to its street railroad or line, plant or system, and not served by a public service corporation of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business. If a public service corporation, in constructing or extending its line, plant or system, interferes or is about to interfere with the operation of the line, plant or system of any other public service corporation already constructed, the commission, on complaint of the corporation claiming to be injuriously affected, may, after hearing, make an order and prescribe terms and conditions for the location of lines, plants or systems affected as it deems just and reasonable.

C. No such corporation shall exercise any right or privilege under any franchise or permit without first having obtained from the commission a certificate of public convenience and necessity.

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D. This article shall not be construed as granting or as having granted to any telecommunications corporation an exclusive franchise or monopoly within the territory described by its certificate unless the commission determines after notice and hearing that such an exclusive franchise or monopoly is in the public interest.

E. When the commission determines after notice and hearing that any product or service of a telecommunications corporation is neither essential nor integral to the public service rendered by such corporation, it shall declare that such product or service is not subject to regulation by the commission.

As amended by Laws 1970, Ch. 121, § 1; Laws 1974, Ch. 58, § 2; Laws 1981, Ch. 210, § 2; Laws 1984, Ch. 218, § 4, eff. April 19, 1984.

For text of conditional amendment, see § 40-281, post

~~§ 40-281. Certificate required before construction by public service corporation; exceptions; complaint by corporation injuriously affected by construction hearing; exclusive franchise or monopoly~~

~~*Text of constitutional amendment*~~

~~A. A public service corporation, other than a railroad, shall not begin construction of a street railroad, a line, plant, service or system, or any extension thereof, without first having obtained from the commission a certificate of public convenience and necessity.~~

~~B. This section shall not require such corporation to secure a certificate for an extension within a city, county or town within which it has lawfully commenced operations, or for an extension into territory either within or without a city, county or town, contiguous to its street railroad or line, plant or system, and not served by a public service corporation of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business. If a public service corporation, in constructing or extending its line, plant or system, interferes or is about to interfere with the operation of the line, plant or system of any other public service corporation already constructed, the commission, on complaint of the corporation claiming to be injuriously affected, may, after hearing, make an order and prescribe terms and conditions for the location of lines, plants or systems affected as it deems just and reasonable.~~

~~C. No such corporation shall exercise any right or privilege under any franchise or permit without first having obtained from the commission a certificate of public convenience and necessity.~~

~~D. This article shall not be construed as granting or as having granted to any telecommunications corporation an exclusive franchise or~~

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12. Review

If the effect of either of orders of Arizona corporation commission in disapproving proposed contract with electric cooperative and in issuing amended certificates of convenience and necessity was to defeat or usurp jurisdiction of Supreme Court where

proceeding had been commenced for mandamus requiring commission to approve or show cause why commission should not approve such contract with cooperative, or to render any judgment to be entered by Supreme Court nugatory, such order would be void. Application of Trico Elec. Co-op., Inc. (1963) 92 Ariz. 373, 377 P.2d 309.

§ 40-282. Application for certificate; hearing; application upon contemplated franchise

A. If the applicant for a certificate of convenience and necessity is a corporation, a certified copy of its articles of incorporation shall be filed in the office of the commission before any certificate of convenience and necessity may issue.

B. Every applicant for a certificate shall submit to the commission evidence required by the commission to show that the applicant has received the required consent, franchise or permit of the proper county, city and county, municipal or other public authority.

C. The commission may, after hearing, issue the certificate or refuse to issue it, or issue it for the construction of only a portion of the contemplated street railroad, line, plant or system, or extension thereof, or for the partial exercise only of the right or privilege, and may attach to the exercise of rights granted by the certificate terms and conditions it deems that the public convenience and necessity require.

D. If a public service corporation desires to exercise a right or privilege under a franchise or permit which it contemplates securing, but which has not yet been granted to it, the corporation may apply to the commission for an order preliminary to the issue of the certificate. The commission may thereupon make an order declaring that it will thereafter, upon application, under rules and regulations it prescribes, issue the desired certificate, upon terms and conditions it designates, after the corporation has obtained the contemplated franchise or permit. Upon presentation to the commission of evidence that the franchise or permit has been secured by the corporation, the commission shall thereupon issue the certificate.

Historical Note

Source:

Laws 1912, Ch. 90, § 50.
Civ.Code 1913, § 2326.

Rev.Code 1928, § 706.
Code 1939, § 69-235.

Law Review Commentaries

Judicial review. 19 Ariz.L.Rev. 488
(1977).

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Note 9

9. Notice

Before a certificate holder's certificate of convenience and necessity can be amended, due process requires, inter alia, that the holder be given notice. *James P. Paul Water Co. v. Arizona Corp. Com'n* (1983) 137 Ariz. 426, 671 P.2d 404.

Where constitutional and statutory provisions under which application was made for certificate of public convenience and necessity to operate a domestic water utility contained no provision as to notice of hearing on such application, corporation commission was not required to give notice of such hearing to all landowners or potential water customers residing within area covered by application, and failure to give such notice by publication or otherwise was not abuse of discretion, where commission, in accordance with its rules, mailed notice of hearing to board of supervisors of county in which area covered by application was located, clerk of nearby city, and daily newspaper and advised attorneys of record for applicants of hearing date. *Walker v. De Concini* (1959) 86 Ariz. 143, 341 P.2d 933.

10. Hearing

Before a certificate holder's certificate of convenience and necessity can be amended,

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due process requires, inter alia, that the holder be given an opportunity to contest a proposed amendment. *James P. Paul Water Co. v. Arizona Corp. Com'n* (1983) 137 Ariz. 404, 671 P.2d 404.

Corporation commission had authority to have director of utilities conduct hearing on unopposed application for certificate of public convenience and necessity to operate a domestic water utility, but it was the duty of commission to have a transcript of the testimony presented at hearing prepared for their study. *Walker v. De Concini* (1959) 86 Ariz. 143, 341 P.2d 933.

11. Mandamus

Conditions could not have changed during two-year period between original order of corporation commission denying contract carrier a permit and Supreme Court decision that denial of application for permit based on specified contract was unreasonable and arbitrary, and carrier was entitled to mandamus to compel issuance of permit by corporation commission which had refused to do so after the decision was handed down. *Cantlay & Tanzola, Inc. v. Williams* (1963) 93 Ariz. 365, 380 P.2d 1019.

§ 40-283. Construction and operation of transportation lines within state; control and regulation of use of streets in municipal corporations; franchises or licenses granted by municipal authorities; notice by board of supervisors of consideration of franchise; action by electors

A. Any person engaged in transportation or transmission business within the state may construct and operate lines connecting any points within the state and connect at the state boundary with like lines, except that within the confines of municipal corporations the use and occupancy of streets shall be under rights acquired by franchises according to law, and subject to control and regulation by the municipal authorities. The use of highways, except state highways, by public utilities not within any incorporated city or town, shall be regulated by the board of supervisors of the county by license or franchise.

B. A board of supervisors in granting a license or franchise, or at any time after it is granted, may impose restrictions and limitations upon the use of the public roads as it deems best for the public safety or welfare.

C. Every franchise granted under this article shall include provisions requiring the grantee thereof to bear all expenses, including damage and compensation for any alteration of the direction, surface, grade or alignment of a county road, made for the purpose of such franchise. If

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the surface of a county highway is used by any grantee for trackage, the franchise shall include reasonable regulations for maintenance by the grantee of that portion of the highway so used.

D. A board of supervisors, before granting any of the privileges authorized under this section, shall give public notice of its intention to make such grant by publishing notice in a newspaper of general circulation, published within the county, for at least once a week for three weeks prior to the day set for consideration of such action. If, on or before such date, more than fifty per cent of the qualified electors of the county petition the board of supervisors to deny such privilege, it shall do so, and any privilege granted against such petition shall be void.

Historical Note

Source:

Laws 1912, Ch. 61, §§ 1, 2.
Civ.Code 1913, §§ 2361, 2362.

Rev.Code 1928, §§ 734, 735.
Code 1939, §§ 69-263, 69-264.

Library References

Municipal Corporations §=680(1).
C.J.S. Municipal Corporations § 1716 et
seq.

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Validity 1

1. Validity

If proviso in Civ.Code 1913, § 2361 (now § 40-283) as to streets and thoroughfares within municipal corporations being subject to control by municipal authorities, was intended as affirmative legislation granting general power to the municipality to regulate and control public service corporations operating therein in the use of streets, it was not pertinent to the title of the act, and violative of Const. Art. 4, § 13. *Phoenix Ry. Co. of Arizona v. Lount* (1920) 21 Ariz. 289, 187 P. 933.

2. In general

Public water utility was required to relocate its distribution facilities at its own expense when county improvement district paved road under which utility's distribution facilities lay, where utility's franchise was granted under express condition that board of supervisors of county should have power to impose such restrictions and limitations and to make such regulations on

roads as might be deemed best for public safety, welfare, and convenience. *Paradise Val. Water Co. v. Hart* (1964) 96 Ariz. 361, 395 P.2d 716.

The proviso of Civ.Code 1913, § 2361 (now § 40-283) that within the confines of municipal corporations the use and occupation of streets and thoroughfares shall be subject to control and regulation by the municipal authorities, was not inserted for the purpose of conferring power upon city authorities over public utilities, but for the sole purpose of limiting the power of boards of supervisors to the granting of rights of way over public highways outside of incorporated cities and towns. *Phoenix Ry. Co. of Arizona v. Lount* (1920) 21 Ariz. 289, 187 P. 933.

3. Relocation expenses

A statute which would reimburse utilities for relocation of their facilities in public right of way due to highway construction or reconstruction would violate provisions of Const. Art. 9, §§ 7, 14 prohibiting governmental gifts or loans of credit to private persons. *Op. Atty. Gen. No. 60-27*.

Where a public utility has a franchise to install and operate poles, lines or other installations within the right-of-way for a

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state highway, and widening of the highway requires their relocation within the right-of-way, state is not required to pay costs of such relocation. Op.Atty.Gen.No. 58-91.

When a street right-of-way becomes a state highway right-of-way through action

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of state highway commission and utility facilities are required to be moved in connection with the construction of the state highway, it is not necessary to reimburse the utility for costs of moving utility facilities to a new location within the state's right-of-way. Id.

§ 40-284. Restrictions upon conduct of public service business by foreign corporations

A. A foreign corporation, unless authorized to transact a public service business within this state, shall not transact within the state any public service business, nor transact within the state any public service business of a character different from that which it is authorized to transact.

B. A license, permit or franchise to own, control, operate or manage any public service business shall not be granted or transferred, directly or indirectly, to any foreign corporation not lawfully transacting within this state a public service business of like character, but foreign corporations engaging in commerce with foreign nations or commerce among the several states of the United States may transact within this state such commerce and intrastate commerce of a like character.

Historical Note

Source:
Laws 1912, Ch. 90, § 26.
Civ.Code 1913, § 2302.

Rev.Code 1928, § 733.
Code 1939, § 69-262.

Cross References

Foreign corporations, generally, see § 10-106 et seq.

Library References

Public Utilities ⇐112.
C.J.S. Public Utilities §§ 3, 12, 14, 66.

Notes of Decisions

1. In general

In determining whether applicant should receive certificate of convenience and necessity, corporation commission had power to determine legal qualifications of applicant, and to judge and determine the legal right of applicant to transact business in the

state, and its decision upon such issue could not be collaterally attacked for error of law, whether such error was one of misconstruction of statute or otherwise, especially where § 40-254 prescribed an exclusive remedy. Arizona Public Service Co. v. Southern Union Gas Co. (1954) 76 Ariz. 373, 265 P.2d 435.

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§ 40-285. Disposition of plant by public service corporations; acquisition of capital stock of public service corporation by other public service corporations

A. A public service corporation shall not sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line, plant, or system necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor shall such corporation merge such system or any part thereof with any other public service corporation without first having secured from the commission an order authorizing it so to do. Every such disposition, encumbrance or merger made other than in accordance with the order of the commission authorizing it is void.

B. The approval or permit of the commission under this section shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture.

C. Nothing in this section shall prevent the sale, lease or other disposition by any such corporation of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such corporation shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public as to any purchaser of the property in good faith for value.

D. A public service corporation shall not purchase, acquire, take or hold any part of the capital stock of any other public service corporation organized or existing under the laws of this state without a permit from the commission.

E. Every assignment, transfer, contract, or agreement for assignment or transfer of any stock in violation of the provisions of this section is void, and the transfer shall not be made on the books of any public service corporation.

Amended by Laws 1984, Ch. 40, § 1.

Historical Note

Source:

Laws 1912, Ch. 90, § 51.
Civ. Code 1913, § 2327.
Rev. Code 1928, § 707.
Code 1939, § 69-236.

The 1984 amendment substituted "A public service corporation" for "A railroad,

street railroad, pipe line, gas, electrical, telephone, telegraph, or water corporation" in the first sentence of subsec. A; and made punctuation changes throughout the section.

Library References

Public Utilities ⇐118.
C.J.S. Public Utilities §§ 4, 9, 70 to 72.